IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3488 of 1998
with
SPECIAL CIVIL APPLICATIONS Nos.4617/2000 to 4676/2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVIDHBHAI DAHYABHAI
Versus
STATE OF GUJARAT

Appearance:
MR.PITAMBER R. ABICHANDANI for Petitioners
DS AFF.NOT FILED (R) for Respondent No. 1
Mr.A.D. Oza instructed instructed by Mr.S.P. Hasurkar, ADDL. GOVERNMENT PLEADER for Respondent No. 2
MR SP HASURKAR for Respondent No. 3

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 10/05/2000

COMMON ORAL JUDGEMENT :

The present petition is filed by the petitioners

for the relief that the respondents be directed to consider the case of the petitioners for promotion to the post of Head Constable Grade I, from the date their immediate juniors were promoted or in the alternative from the date when promotion became due to the petitioners, with all consequential benefits. The petitioners have also prayed for the direction to the effect that the petitioners shall be paid special pay/ special allowance which is being granted to other identically situated MT (Motor Transport) Drivers. The petitioners have also prayed for the direction that the petitioners be granted arrears of the same from its due date. The petition was filed on 28.4.1998. This court had issued rule on 26.11.1998 making it returnable on 24.12.1998. The perusal of the order passed by this Court on 26.11.1998 reveals that the learned counsel for the petitioners submitted to the Honourable Court that he relies upon the decision of this Court rendered in Special Civil Application No.4626 of 1988 dated 6.3.1997, and that the point involved in this case is exactly identical to the one which has been decided in the aforesaid case.

2. The facts giving rise to the present petition are as under.

The petitioners had joined the Police Department as Police Constables/ MT Drivers in the year 1975. It is the case of the petitioners that on the date of filing of the petition they had put in service for a period of more than 22 years. The petitioners were paid an amount of Rs.20/- per month as special pay, which then came to be revised to an amount of Rs.50/- and thereafter the said amount came to be raised to Rs.100/- with effect from 1986. It is also the case of the petitioners that in the past, the said amount was added to their pay and their basic pay was increased by that amount which would in turn increase the amount of salary of the petitioners. It is the case of the petitioners that the respondent authorities had made the provision as aforeaid, looking to the nature of work and the other identically situated persons for the work being carried out by them.

3. The grievance of the petitioners is that in the year 1989 certain persons were promoted who were juniors to the petitioners and the same persons were again given promotion which can be seen from the table annexed to the petition as Annexure 'B'. The perusal of Annexure 'A' reveals that the persons were promoted as Head Constable Grade II and the others came to be promoted as Head Constable Grade 'I' somewhere in the year 1995- 96. The

petitioners also came to be promoted to the post of Head Constable Grade 'II' somewhere in the year 1991 (on or about 9.3.1991), though the petitioners were due for the said promotion in the year 1989- 90. The grievance of the petitioners aggravated when after the promotion of the petitioners to the post of Head Constable Grade 'II', the special allowance payable to the Drivers was stopped, though certain other identically situated drivers were continued to be paid the said allowance till date (as averred in para 6 of the petition). It is also the case of the petitioners that after promotion of the petitioners certain other juniors of the petitioners were also promoted as Head Constable Grade 'II' and they are also continued to be given the special pay and the same is continued till date and therefore, the petitioners are subjected to a discriminatory treatment which is required to be redressed by this Court. The petitioners therefore, approached this Court by the present petition and the petitioners had prayed for three- fold relief as set out hereinabove.

4. The petitioners placed reliance on the judgement and order dated 6.3.1997 passed in Special Civil Application No.4626 of 1988, which according to the petitioners, was filed by other identically situated persons. The said petition came to be allowed by this Court (Coram : S.K. Keshote, J.). A copy of the said judgement and order is annexed to this petition, Annexure 'C'. The learned advocate for the petitioners invited the attention of this Court to para 5 of the said judgement, which is as under :

> "The petitioners have made an alternate prayer for direction to the respondents to give them other allowances on the special pay but as the special pay is never and basic pay and rightly it was not taken to be so by the respondents. However, it is an admitted case that till 1.1.1986, the special pay was taken to be the part of the basic pay and on which the petitioners were receiving the other allowances. At the time of offer of of the promotion to the petitioners, they had a reason and I may say a good reason to decline the promotion. the promotion is accepted for one of the reasons that the pay of the employee/ officer is increased. No officer or employee likes to have the promotion on which his pay is likely to be reduced. So the claim of the petitioners for promotion with effect from the date on which they became due or when their juniors were promoted

may have no substance, but their claim for consideration for promotion from 1.1.1986 and on being found suitable for promotion from the said date may have some justification. But the petitioners have filed this Special Civil Application in the year 1988 before this Hon'ble Court. The date of filing of the Special Civil Application is 11th March 1988."

5. It is submitted by the learned advocate for the petitioners that the petitioners are also entitled for the same benefits. The learned advocate submitted that in the aforesaid case, the Honourable Court was pleased to grant benefits from the date of filing of the petition, which was 11.3.1998. The present petitioners may also be awarded benefits from that date, i.e. 11.3.1998. The learned advocate for the petitioners submitted that if not all, at least some of the reliefs are required to be granted from the date on which the petitioners have become entitled for such reliefs like special pay, which according to the petitioners was stopped on the date of promotion of the present petitioners to the post of Head Constable Grade 'II'. It is the case of the petitioners that the other identically situated persons were and are continued to be paid the special allowance even after their promotion to the post of Head Constable Grade II, while only the petitioners are deprived of the said special pay on their promotion to the post of Head Constable Grade 'II'.

6. The learned advocate for the petitioners invited the attention of this Court to para 6 of the aforesaid judgement, which contains directions issued by this Court, which reads as under :

"6. So the interest of justice will be met in case this Special Civil Application is disposed of with the direction to the respondents to consider the case of the petitioners for promotion to the post of Head Constable as on 11th March 1988, and in case, the petitioners or some of the petitioners are found suitable for promotion to the post of Head Constable on the said date then the petitioners or the petitioners who are found suitable, as the case may be, shall be entitled for all the consequential benefits which flow therefrom. This exercise is to be undertaken by the respondents within a period of three months from the date of receipt of certified copy of this order and the

consequential benefits have to be given to them within a period of three months next thereafter. The Special Civil Application and the rule stand disposed of accordingly with no order as to costs."

7. The learned Government Pleader, Mr.A.D.Oza, instructed by Mr.S.P. Hasurkar, appearing on behalf of the respondents submitted that the present petition is misconceived inasmuch as in another similar petition being Special Civil Application No.6727 of 1988, this Court (Coram : D.M. Dharmadhikari, CJ.) by a judgment and order dated 5.5.2000, has dismissed the petition of a group of petitioners, which also had the identical facts. The learned Govt. Pleader invited attention of the Court to para 5 of the said judgement and order wherein it is stated that,

" .. .. in my opinion, the petitioners do not deserve grant of any relief. The facts stated above clearly go to show that when promotion was offered to the petitioners to the post of Head Constable in general line, they declined the same, as their total emoluments would have dropped. they got promotion in the Transport Department and they accepted those promotions. The petitioners having willingly foregone their chances of promotion as Head Constable in general line, on their subsequent promotion as Head Constable in Transport Department, they cannot claim status and benefits on the post of Head Constable from the date when they were offered that post in the general line and they declined to accept the same. there is neither equity nor law in favour of the petitioners. Consequently, the petition is dismissed."

8. The learned advocate for the petitioners submitted that the said judgement and order will not have an application to the facts of the present case. The said judgment and order deals with only one aspect of the relief, namely, the benefits of promotion from the date when they were offered that post in general line and which they declined to accept. The learned advocate for the petitioners pointed out that in the present petition, the petitioners are claiming three- fold relief :

(i) Promotion to the post of Head Constable Grade 'I' from the date when their immediate juniors were promoted. In the alternative from the date when

promotion became due to the petitioners, with all consequential benefits;

(ii) The authorities to grant special pay/ special allowance which is being granted to other identically situated MT Drivers; and

(iii) Arrears of the same (of special pay/ special allowance) from its due date.

9. The learned advocate for the petitioners submitted that in that view of the matter it will be in the interest of justice, if this Court directs the authorities to consider the case of the petitioners on the same lines as was directed in the matter of Special Civil Application No.4626 of 1988. The learned advocate for the petitioners also submitted that no prejudice will be caused to the respondents if a direction is issued in the same lines directing the respondents to consider the case of the present petitioners also.

10. On perusal of the facts and the averments made in the petition it is felt that the petitioners do have a case which requires to be considered by the authorities, more particularly in light of the averments made in paras 6 and 7 of the petition. Once the authorities are considering the case of the petitioners for that particular aspect (mentioned in paras 6 and 7 of the petition), it is felt that it will be just and proper to direct the authorities to consider the case of the petitioner as a whole in accordance with law with an added direction that the authorities shall try to maintain a parity between the petitioners of Special Civil Application No.4626 of 1988 and the present petitioners.

11. In the result the present petition is allowed and the respondent authorities are directed to consider the case of the petitioners by treating the present petition as a representation of the petitioners and decide the same within the stipulated time prescribed hereinbelow.

The petitioners shall furnish a copy of the petition along with the certified copy of this judgement to the respondent authorities within four weeks from the date of receipt of the same, which the authorities shall decide within eight weeks thereafter. It is further directed that the respondent authorities shall maintain parity between the present petitioners and the petitioners of Special Civil Application No.4626 of 1988 in accordance with law and in case the authorities decide that the

petitioners or some of the petitioners are not entitled for the benefits, the authorities shall pass a reasoned order and the same shall be communicated to the petitioners concerned. In case in which the authorities find that the petitioners are entitled for the benefits, the same shall be paid to such petitioners within a period of three months from the date of the decision.

12. The petition is allowed with the aforesaid directions. Rule is made absolute to the aforesaid extent only with no order as to costs.

(Ravi R. Tripathi, J.)

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